

2016 CITY OF SAN JOSE – POA MOA NEGOTIATIONS**CITY PROPOSAL TO POA – HOUSEKEEPING - LANGUAGE CHANGES DUE TO CHARTER SECTION 1111**

City Proposed Language:

ARTICLE 16 CITY RIGHTS AND CHARTER RIGHTS

- 16.1 Neither party concedes or relinquishes its rights under Charter Section 1111 or under state law.

Such rights include the ability by the City, for example, to propose a change in terms and conditions of employment not otherwise covered by the Agreement and to seek such change pursuant to Charter Section 1111 or pursuant to state law for matters not covered by Section 1111.

In addition, the City reserves its rights to determine matters outside the scope of representation.

Thus, except to the extent that Section 1111 of the Charter of the City of San Jose grants rights to the parties herein, and except to the extent that rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or other provisions of the City Charter including, but not limited to: the right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; or reclassify employees; provide merit increases; assign employees overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or any City Department Agency or Unit.

The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after, or before hours of duty, without consultation or meeting and conferring with the employee affected or the San Jose Police Officers' Association representing such employee.

ARTICLE 55 SEPARABILITY

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer or negotiate on the Article or subsections thereof affected. If they are unable to come to an agreement on

the matter, the provisions of Section 1111 of the Charter shall apply. However, to the extent that the Article or subdivision falls outside the scope of Section 1111, both parties retain all rights provided by state law, including MMBA Section 3505.4 – 3505.7 All other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 56 MEET AND CONFER AND INTEREST ARBITRATION

The meet and confer process between the City and the Police Officers' Association shall be conducted in accordance with the following procedures:

- 56.1 Meet and Confer. The goal of the meet and confer process is to reach a voluntary settlement which adequately addresses the interests of both parties. The parties shall be committed to conducting the process in good faith, treating all participants with respect and honoring each others' time by providing advance notice of scheduled and cancelled meeting dates.
- 56.2 Mediation. In the event impasse is declared regarding contract negotiations for a new MOA, the parties will participate in mediation prior to arbitration in an attempt to resolve the dispute. However, the parties shall arrange for the third neutral member of the arbitration board~~an arbitrator~~ and schedule arbitration dates in advance (arbitration, including the selection of the third member of the arbitration board, shall be conducted in accordance with City Charter Section 1111). If the mediation process has not been completed within a 90-day period, beginning with the first day of impasse as determined by written notification of impasse by either party, either party may proceed to arbitration on those issues which fall within the scope of Section 1111, both parties retain all rights provided by state law, including MMBA Section 3505.4 – 3505.7. ~~If the parties do not proceed to arbitration, the arbitrator shall be cancelled. All issues concerning the scope of the Arbitration Board's authority, jurisdiction or powers shall, upon request of either party, be resolved by petition to the Superior Court.~~
- 56.3 If the parties remain at impasse following mediation, the POA may choose to make a presentation during a public City Council meeting without the requirement of a Council response.